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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,392	08/19/2003	Yushi Niwa	P/1909-164	3416
2352 7590 10/30/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER MISIASZEK, MICHAEL				
ART UNIT		PAPER NUMBER		
3625				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/643,392

Applicant(s)

NIWA, YUSHI

Examiner

Michael Misiaszek

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
4a) Of the above claim(s) 21-26 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 and 27-33 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 7/25/2005
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-20 and 27-33 in the reply filed on 7/25/2008 is acknowledged.

Information Disclosure Statement

The Examiner notes that the lined-through references on the IDS filed 7/25/2005 were not considered due to a lack of English translation.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 1. Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Particularly, claims 6, 7, 11 and 34, are written in such a way that the scope is completely unclear. The Examiner is unable to ascertain the meaning of the claim limitations and is thus unable to apply relevant prior art to the claims.

The remaining claims will be interpreted as best understood by the Examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 8-10, 12-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone et al. (US 20070016486 A1, hereinafter Stone) in view of Bezos et al. (US 20080167946 A1, hereinafter Bezos) and Applicant's admission of prior art.

Regarding Claims 1-4, 5, 8, 27, 29, 30, 32, 33

Stone discloses an electronic purchasing system, comprising:

- mobile terminals of users having a radio communication function and a short distance communication function (at least paragraph [0039]: cell phones; see also present specification, page 1)
- a first seller system for selling first products having a first seller server and plural first seller apparatuses connecting to said first seller server (at least figure 2c)
- a second seller system for selling second products having a second seller server (at least figure 1b: multiple seller interfaces)
- a means that relates said first product(s) purchased by said user to said second product(s) by referring to the information in said first product purchased record, and issues order sheet data, in which said information of said first product purchased record of each of the users and second product information of said

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second product(s) relating to said first product(s) purchased by said user are included in a combined state as display information, and further in which an process instruction that instructs to transmit second product order information to said second seller server when said user selected some second product(s) is described (at least paragraph [0127]: referral database)

Stone does not explicitly disclose:

- wherein: each of said mobile terminals, comprising: a means that transmits first product order information for said first product(s) to one of said plural first seller apparatuses via said short distance communication function by an operation of said user,
- each of said plural first seller apparatuses, comprising: a means that receives said first product order information from said mobile terminal, and delivers said first product(s) to said mobile terminal,
- said second seller server, comprising: a means that receives said second product order information and delivers said second product(s) to said mobile terminal

However, Applicant's own specification is an admission of prior art, and further teaches these features in at least pages 1-5, referring to conventional systems. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Stone to have included the various features taught by the Applicant, since such a modification would have only united elements of the prior art references, with no change in their respective functions and which yield predictable results.

Stone further does not disclose

- a means that makes a first product purchased record for said first product(s) purchased by said user, and said first seller system, comprising:
- a means that transmits said order sheet data to said mobile terminal
- each of said mobile terminals, further comprising: a means that displays said display information in said order sheet data, and transmits said second product order information to said second seller server when some second product(s) was selected by said user on said display information
- a means that calculates a commission to be paid to said first seller system and transmits commission payment information including information of said calculated commission to said first seller server
- said first seller server, comprising: a means that confirms said commission payment based on said commission payment information.

Bezos teaches that it is known to include transmitting and displaying order information (at least figure 10c) and calculating and confirming commission payment for a product referral (at least paragraph [0079]) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Stone with the order information and commission of Bezos, since such a modification would have only united elements of the prior art references, with no change in their respective functions and which yield predictable results.

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Regarding Claim 5

Bezos substantially discloses the application of various commission fees to product recommendation.

Regarding Claims 13, 15

Stone discloses transmitting a destination email address of a mobile terminal (at least paragraph [0117]).

Regarding Claims 16, 17

The present specification (see at least pages 1-5) discloses ordering digital products (ring tones) with a mobile terminal and seller servers transmitting the digital products to the mobile terminals.

Regarding Claims 18, 19

The combination of Stone, Bezos, and Applicant's own specification substantially discloses the claimed product records and display of product information, as detailed above. Though Stone and Bezos do not explicitly disclose the specific configurations in which the order and product information is displayed, It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Stone and Bezos to have displayed the information in any manner for in any user because such would have been an obvious matter of design choice in light of the system already disclosed by Stone and Bezos. Such modification would not have otherwise affected the system of Stone and Bezos and would have merely represented one of numerous steps that the skilled artisan would have found obvious for the purposes already disclosed by Stone and Bezos. Additionally, applicant has not persuasively demonstrated the criticality of providing displaying in the manner set forth by the claimed invention versus the manner in which Stone and Bezos disclose providing re-skinning.

Regarding Claim 20

The present specification (see at least pages 1-5) discloses ringing tones and karaoke music data via mobile terminals.

Regarding Claims 9, 10, 28, 31

Stone substantially discloses the recited relation table and connection between sellers (see at least paragraph [0127]) and further discloses product information (at least paragraph [0014]) and Bezos substantially teaches the recited order data (at least figure 9) in a similar environment.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Misiaszek whose telephone number is (571)272-6961. The examiner can normally be reached on 9:00 AM - 5:30 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art
Unit 3625

Michael A. Misiaszek
Patent Examiner
10/26/2008